



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

LNO/172079

PRELIMINARY RECITALS

Pursuant to a petition filed February 17, 2016, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Other, a hearing was held on April 20, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent correctly imposed a lien against the petitioner to pursue recovery of a past-due child care public assistance debt.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington State. She was receiving child care benefits in the period of February 26, 2012 – May 18, 2012.

2. On June 6, 2012, the Wisconsin Department of Children and Families, by its agents, issued a Child Care Overpayment Notice, with worksheets showing the calculations, to the petitioner informing her it had determined that she had been overpaid \$4,808.68 in Child Care benefits in the period of February 26, 2012 – May 18, 2012.
3. On July 3, 2012, a Repayment Agreement was mailed to the petitioner asking her to agree to repay the overpayment described in Finding #2, above; the agency received no response.
4. The petitioner was issued dunning letters on that debt three times, on August 2, 2012, September 5, 2012, and October 2, 2012. See, Exhibit #4.
5. On January 24, 2016, the respondent issued a Notice of Warrant Docketed in Milwaukee County to the petitioner informing her that the Department had acted to impose a lien of public record against her in the total amount of \$4,825.28.
6. On February 17, 2016, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the imposition of the lien.

DISCUSSION

There is no jurisdiction if a request for a hearing is not filed timely. A request for a hearing concerning the docketing of a warrant is untimely if it is not filed within 20 days from the date on the notice. Wis. Admin. Code § DCF 101.23(9)(a)5; see also, Wis. Stat. § 49.195(3s). A hearing request is considered filed on the date of actual receipt by DHA, or the date of the postmark, whichever is earlier. Wis. Admin. Code § HA 3.05(3)(c). A hearing request that is not filed within the 20-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e).

In this case, the notice was dated January 24, 2016. Petitioner did not request a hearing until February 17, 2016, (the date of the facsimile letter requesting a hearing). This means it was filed 24 days after the notice date, and is therefore outside of the allowed 20-day time period. Accordingly, petitioner's hearing request is untimely and no jurisdiction exists for DHA to consider the merits of petitioner's appeal.

In addition, even if petitioner's request for a hearing had been filed in a timely manner, a hearing concerning the docketing of a warrant is limited to questions of prior payment of the debt that DCF is proceeding against and mistaken identity of the debtor. Wis. Admin. Code § DCF 101.23(9)(a)5; See also, Wis. Stat. § 49.195(3s). It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, her appeal is untimely; no exception applies, and I am without any equitable powers to direct any remedy beyond the remedies available under law.

CONCLUSIONS OF LAW

Jurisdiction is not present to reach the merits of the appeal contesting the imposition of a lien because petitioner's request for a hearing is untimely.

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby is, dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 18th day of May, 2016

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 18, 2016.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit